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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 MARK DONNELLY,

10 Plaintiff,

11 v.

12 ATDEC DISTRIBUTION USA PTY.
13 LIMITED,

14 Defendant.

No.

NOTICE OF REMOVAL

(King County Superior Court, Case No. 19-
2-09015-4 KNT)

Action Filed: April 2, 2019

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16 TO THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
17 WASHINGTON AND TO PLAINTIFFS AND COUNSEL OF RECORD:

18 PLEASE TAKE NOTICE that Defendant Atdec Distribution USA Pty Limited (“Atdec”)
19 hereby removes this case, originally filed in King County Superior Court under King County
20 Cause No. 19-2-09015-4 to the United States District Court for the Western District of
21 Washington (“King County Action”). Atdec removes this case pursuant to 28 U.S.C. §§ 1332,
22 1441, and 1446, on the grounds set forth below.

23 On or about April 2, 2019, Plaintiff Mark Donnelly (“Plaintiff”) filed a Complaint in the
24 King County Action, a copy of which is attached hereto as Attachment A. Atdec was served
25 with the Complaint on April 2, 2019. Plaintiff’s Complaint asserts causes of action for breach of
26 contract and breach of the duty of good faith and fair dealing. *See* Compl. ¶¶ 18-29. Atdec is

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1 entitled to remove this action because there is complete diversity of citizenship and the amount
2 in controversy exceeds \$75,000.

3 **I. ORIGINAL JURISDICTION—DIVERSITY OF CITIZENSHIP**

4 **A. Amount in Controversy.**

5 Plaintiff claims that Atdec has breached a purported contract between the parties. While
6 Atdec denies any liability as to Plaintiff's claims, the amount in controversy requirement is
7 satisfied because Plaintiff seeks "no less than \$450,000" in damages. *See* Compl., Request for
8 Relief. As such, the amount in controversy, as alleged in the Complaint, exceeds the
9 jurisdictional minimum of \$75,000. *See* 28 U.S.C. §§ 1332, 1446(c)(2).

10 **B. Citizenship.**

11 Where the amount in controversy is satisfied, district courts have original jurisdiction in
12 matters between "citizens of a State and citizens or subjects of a foreign state." 28 U.S.C.
13 § 1332(a)(2). Diversity jurisdiction requires complete diversity between each defendant and
14 each plaintiff. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 & n.3, 117 S. Ct. 467, 136 L. Ed. 2d
15 437 (1996); *see also Faysound Ltd. v. United Coconut Chems., Inc.*, 878 F.2d 290, 294-95 (9th
16 Cir. 1989). For diversity purposes, a person is a "citizen" of the state in which he or she is
17 domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). A party's
18 residence may be "prima facie" evidence of domicile. *See State Farm Mut. Auto Ins. Co. v.*
19 *Dyer*, 19 F.3d 514, 520 (10th Cir. 1994). Here, Plaintiff is a resident of Colorado. *See* Compl.
20 ¶ 1. In 2009, Plaintiff listed his address in the "Share Option Deed," which forms the basis of
21 Plaintiff's claims in this action, as located in Colorado. As such, he has been a resident of
22 Colorado for nearly ten years, and is thus a citizen of Colorado.

23 Atdec is a corporation organized under the laws of Australia with its principal place of
24 business located in New South Wales, Australia. Declaration of Jerome Green ¶¶ 2-3, attached
25 hereto as Exhibit A; *see also* Compl. ¶ 2. A "corporation of a foreign State is, for purposes of
26 jurisdiction in the courts of the United States, to be deemed, constructively, a citizen or subject

1 of such State.”” *JPMorgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd.*, 536 U.S. 88,
2 91, 122 S. Ct. 2054, 153 L. Ed. 2d 95 (2002) (citation omitted). Accordingly, Atdec is a citizen
3 of Australia.

4 Complete diversity is present, as Atdec is a foreign citizen and Plaintiff is a citizen of the
5 United States and a citizen of Colorado. *See* 28 U.S.C. § 1332(a)(2).

6 **II. VENUE**

7 Venue lies in this district pursuant to 28 U.S.C. § 1441(a), as Plaintiff originally brought
8 this action in King County Superior Court. Venue is therefore proper in this judicial district.
9 Seattle is the proper division for the matter pursuant to Local Civil Rule 3(e).

10 **III. TIMELINESS OF REMOVAL**

11 Defendant Atdec was served with the Complaint on April 2, 2019. This Notice of
12 Removal is timely because it is filed within thirty days after service of the Complaint. 28 U.S.C.
13 § 1446(b); *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 119 S. Ct. 1322, 143 L.
14 Ed. 2d 448 (1999) (30-day deadline to remove commences upon service of summons and
15 complaint).

16 **IV. ATDEC HAS SATISFIED THE REMAINING PROCEDURAL REQUIREMENTS**

17 Atdec will file a Verification of State Court Records and Proceedings pursuant to Local
18 Civil Rule 101(c) (and 28 U.S.C. § 1446(a)) enclosing copies of all documents filed in the King
19 County Action, including all process, pleadings, and orders served upon Atdec in the action.

20 Promptly after or concurrent with the filing of this Notice of Removal, Atdec will give
21 written notice of the filing of this Notice of Removal to Plaintiff and will file a copy of this
22 Notice of Removal with the Clerk of the King County Superior Court, as required by 28 U.S.C.
23 § 1446(d).

24 The removal of this action terminates all potential proceedings in King County Superior
25 Court. *See* 28 U.S.C. § 1446(d).

1 By filing this Notice of Removal, Atdec does not waive, and expressly reserves, any
2 defenses which may be available.

3 WHEREFORE, Atdec prays that this civil action be removed from the King County
4 Superior Court to the United States District Court for the Western District of Washington at
5 Seattle.

6
7 DATED: May 2, 2019.

8 STOEL RIVES LLP

9
10 /s/ Todd A. Hanchett

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19 *Attorneys for Defendant*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 2, 2019, I electronically filed the foregoing **NOTICE OF**
3 **REMOVAL** with the Clerk of Court using the CM/ECF system, which will send notification of
4 such filing to all parties appearing in this case:

5
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17
18 Dated: May 2, 2019

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